No. 06-744

In The
Supreme Court of the United States

RAYMOND STACEY, INDIVIDUALLY
AND AS CO-EXECUTOR OF THE
LAST WILL OF HELEN STACEY,

Petitioner,

v.

CITY OF HERMITAGE, PENNSYLVANIA, ET AL.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit**

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Has the Petitioner failed to meet the standards for review on certiorari?

   Suggested Answer: Yes.

2. Is the Petition for Writ of Certiorari filed jurisdictionally out of time under this Court's own rules and therefore improperly docketed?

   Suggested Answer: Yes.

3. Did the U.S. Court of Appeals for the Third Circuit correctly limit costs awarded to Petitioner and deny Petitioner's request for litigation costs and attorneys' fees?

   Suggested Answer: Yes.

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STATEMENT OF THE CASE

This Court is not being asked to review the merits of this case, but rather to evaluate whether the U.S. Court of Appeals for the Third Circuit (hereinafter "Third Circuit") properly applied this Court's prior order, which issued on October 11, 2005. (App. 1.) The factual background of this case is useful, however, in that it gives the Court a window into the long and unusual history of this litigation, and will enable the Court to properly review the Petition now before it.

The Petitioner is Raymond Stacey individually, and in his capacity as representative of the estate of Helen Stacey. The Pennsylvania Commonwealth Court summarized the facts in this case in its decision in *Stacey v. City of Hermitage Bd. Of Appeals*, 789 A.2d 772 (Pa. Commw. 2001):

> In 1997, the City informed Stacey that her property was in violation of the City's property maintenance code and that, therefore, it was proceeding to have her property declared a public nuisance. In 1998, the City adopted a new property maintenance code, which mirrors the Building Officials and Code Administrators National Property Maintenance Code (BOCA Code). Consequently, the City notified Stacey that her property was in violation of the BOCA Code and that any corrective action had to be completed within thirty days.
>
> Stacey appealed to the City of Hermitage Board of Appeals (Board). The Board held a hearing on April 15, 1999 and, upon conclusion, determined that Stacey's structure was an attractive nuisance, unsafe for human habitation, littered with rubbish or garbage and uncontrolled weed growth, a fire hazard and in danger of collapse.

Stacey appealed. By order dated April 19, 2000, the trial court affirmed the Board's determination in all respects except one. It reversed the Board's determination that Stacey's property constituted a fire hazard. No appeal was taken from that order.

Thereafter, the City began proceedings to have the structure demolished. On June 1, 2000, the City informed Stacey that she had the right to cure the structure's problems within thirty days and that if she failed to do so, demolition would follow. On June 30, 2000, Stacey's son, Raymond, requested an extension of time in which to complete the repairs. By that time, Raymond had distributed two loads of sand into the basement. n2 The City denied Raymond's request for an extension of time.

n2. Previous flooding caused the basement to cave.

On August 30, 2000, Stacey filed a petition for special relief in the nature of a temporary injunction against the Board and the City. In her petition, Stacey alleged that she was arbitrarily denied a hearing before the Board on the issue of demolition, that she was not notified of her right to appeal the City's decision to demolish her residence, and that the structure had value and could be restored. n3

n3. On August 31, 2000, Stacey executed a durable power of attorney naming Raymond as her legal representative. Raymond is participating in this appeal as amicus curiae.

The trial court issued an order granting the temporary injunction and set a permanent injunction hearing for September 5, 2000. At the conclusion of the hearing, the trial court determined that 1)

> it was bound by its April 19, 2000 order concluding that the structure was unsafe, 2) it would be unreasonable to repair the structure where it would have to be taken down to the studs and 3) Stacey was not entitled to a hearing before the Board because no timely appeal was filed. Accordingly, the trial court entered a decree nisi vacating the temporary injunction.
>
> Stacey took exceptions to the decree nisi. On November 6, 2000, the trial court entered an order affirming its prior decree. The following day, November 7, 2000, the City demolished the structure. . . .

Id. at 773-774. Petitioner Helen Stacey appealed the trial court's order to the Commonwealth Court, which affirmed that order on November 8, 2001. Petitioner Helen Stacey then filed a petition for allowance of appeal with the Pennsylvania Supreme Court, which was denied on July 10, 2002. *Stacey v. City of Hermitage*, 806 A.2d 865 (Pa. 2002).

On November 6, 2002, Petitioner filed a complaint with the United States District Court for the Western District of Pennsylvania (hereinafter "District Court") alleging various statutory and constitutional violations against some twenty-two (22) defendants in connection with the demolition of Petitioner Helen Stacey's former residence. (App. 31.) The City of Hermitage and eight of the individual Defendants: [Gary Hinkson (City Manager), Edward Stanton (City Chief of Police), Russell Penn, Jr. (City Inspector), Jeffrey Osborne (Assistant City Inspector), Robert Goeltz (City Fire Marshall), James "Pat" White (City Commissioner), Thomas Kuster (City Solicitor), and H. William White, III (City Solicitor)], filed a motion to dismiss that complaint.

The complaint alleged federal constitutional rights to relief under the Fourth, Fifth, Ninth, and Fourteenth Amendments pursuant to 42 U.S.C. § 1983 of the Civil Rights Act, (*see* Compl. ¶¶1, 52-55, 58), a conspiracy claim under the Racketeer Influence and Corrupt Organizations Statute (RICO), 18 U.S.C. § 1961 *et seq.*, (*see* Compl. ¶¶1, 50, 56), and criminal law violations of 18 Pa.C.S. § 911 (Pennsylvania Corrupt Actions Act) and § 4910 (relating to tampering with or fabricating physical evidence) (*see* Compl. ¶¶38, 50, 56).

The District Court dismissed all of Petitioner's claims on September 22, 2003. Petitioner then filed an appeal with the Third Circuit. On November 24, 2004, the Third Circuit affirmed the decision of the District Court in part and reversed and remanded the malpractice claim against Petitioner's former attorneys[1] (App. 21) (having nothing to do with the City or City defendants), and the civil rights claim against the City based upon an alleged improper lien filing.

On December 6, 2004, Petitioner filed a Motion to Extend Time to File a Petition for Rehearing before the Third Circuit, which was granted until December 15, 2004. Petitioner failed to file such a Petition. On December 22, 2004, the Third Circuit certified the November judgment. On December 29, 2004, Petitioner filed a Motion to File a Petition for Rehearing Out of Time. On January 11, 2005, the District Court ordered Petitioner to file an Amended Complaint by February 4, 2005. Instead, Petitioner filed a

[1] This legal malpractice claim is referred to later because Petitioner has repeatedly attempted to cast himself as having acted pro se for some substantial portion of this case, which is flatly untrue.

Motion to Stay the District Court Proceeding pending his (second) petition to this Court for a Writ of Certiorari (an earlier petition for certiorari had been filed with this Court and denied after the conclusion of the state court proceedings). On March 4, 2005, this Court returned the (second) certiorari petition as being filed out of time. On March 10, 2005, the Third Circuit granted Petitioner's Motion to File a Petition for Rehearing (out of time) until March 31, 2005.

Petitioner filed a Petition for Rehearing *en banc* (out of time) with the Third Circuit on March 30, 2005. On April 11, 2005 Petitioner also filed a Motion to Stay with the District Court, raising jurisdictional objections to the District Court Orders (which required an Amended Complaint to be filed) prior to the Court of Appeals' disposition of Petitioner's Petition for Rehearing. On April 15, 2005, the District Court denied Petitioner's Motion to Stay because, at the time, the Third Circuit had not ruled on the Petition for Rehearing and had not recalled its mandate. On the same date, the Third Circuit recalled the mandate issued on December 22, 2004. On May 11, 2005, the Third Circuit again denied Petitioner's request for rehearing and on May 19, 2005, reinstated its original judgment dated November 24, 2004. (App. 30.)

Petitioner's (third) Petition for Writ of Certiorari to this Court was filed on or about August 8, 2005, and it argued that the Third Circuit's judgment of November 24, 2004 (App. 21) should be vacated because it relied on the *Rooker-Feldmen* doctrine to uphold the District Court's dismissal of Petitioner's claims. Despite the fact that this Court had already denied Petitioner's certiorari review twice, and despite the fact that this Court had denied Petitioner's certiorari review only a few weeks earlier

because the petition was filed out of time on October 11, 2005 (App. 1), this Court granted Petitioner's (third) Petition for Writ of Certiorari and vacated and remanded the Third Circuit's decision "with costs" for reconsideration in light of this Court's decision in *Exxon Mobile Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005). This Court noted that "clerk's costs" were $300.00.

Upon reconsideration, the Third Circuit issued a new Opinion and Order on April 19, 2006. (App. 5.) Petitioner filed a Motion for Rehearing *en banc*, which was denied on July 18, 2006. Under this Court's rules, Petitioner had ninety (90) days to file a (fourth) Petition for Writ of Certiorari with this Court for review of the April 19, 2006 Opinion and Order, which means that Petitioner was required to file the Petition by October 16, 2006 (ninety days from the denial of the Motion for Rehearing *en banc*). On August 1 and 2, 2006, the District Court (Judge Terrence F. McVerry) recast the caption in accordance with the Third Circuit's Opinion and Order of April 19, 2006. (App. 5.) In response, on August 17, 2006 Petitioner filed a Motion for Reconsideration with the District Court of its Orders of August 1 and August 2, 2006 dismissing certain defendants and changing the caption in accordance with the April 19, 2006 Opinion and Order of the Third Circuit. (App. 5.) In apparent further response, on August 21, 2006 Petitioner filed in the District Court an Amended Complaint, which deliberately included claims against the Defendants that had been removed from the case caption by Judge McVerry's August 1 and 2 Orders. On September 6, 2006, the District Court denied Petitioner's Motion for Reconsideration and ordered the Amended Complaint stricken. (App. 73.) This was then followed by a Motion for Leave to File a Second Amended Complaint, and filed a

Second Amended Complaint simultaneously with the Motion on September 15, 2006.

Only after all of the foregoing did Petitioner finally attempt to seek review by this Court from the Third Circuit's April 19, 2006 Order (App. 5) by filing a Petition for Writ of Mandamus on or about October 16, 2006 (now docketed at 06-745). Petitioner apparently filed a mandamus petition rather than a certiorari petition because he wants this Court to order the individual Third Circuit judges to take particular actions regarding this Court's October 11, 2005 Order. (App. 1.) Ultimately, Petitioner did file a (fourth) Petition for Writ of Certiorari, but not until November 29, 2006 (156 days after the April 19, 2006 Order for which he is seeking review and 134 days after rehearing was denied).

The City of Hermitage intends this Brief in Opposition to be its reply to both the Petition for Writ of Certiorari and to the Petition for Writ of Mandamus.

Petitioner's (fourth) Petition for Writ of Certiorari asks this Court to take two actions. First, it asks this Court to award Petitioner's attorneys' fees for this case because Petitioner believes that this Court's Order of October 11, 2005 (App. 1) (which vacated the Third Circuit's decision affirming dismissal of claims based on the *Rooker-Feldman* doctrine) renders them "prevailing parties" as that term is understood in the context of attorneys' fee awards after a judgment in a federal civil rights case. Second, Petitioner wants this Court to exercise "supervision" over the Third Circuit Judges who participated in that Court's Opinion and Order of April 19, 2006. (App. 5.) The exact nature of or authority for that supervision is not clear from either Petition. It seems clear,

however, that Petitioner wants this Court to give specific direction to the Third Circuit as to how it should apply this Court's Order of October 11, 2005. (App. 1.)

REASONS FOR DENYING REVIEW

I. The Petition does not satisfy Supreme Court Rule 10, governing Review on Certiorari.

Most of the claims and defendants that Petitioner argues should not have been removed from this case (which is his underlying disagreement with the Third Circuit's April 19 Order) are not claims against the City of Hermitage or City defendants. The request for attorneys' fees and costs, and also the allegation of conspiracy, do involve the City of Hermitage. Without regard to the particular defendants who are the targets of Petitioner's various allegations, however, it should not be overlooked that this Petition for Writ of Certiorari (and also the Petition for Writ of Mandamus) do not meet the basic standards for appellate review by this Court.

Supreme Court Rule 10 sets forth the types of matters that this Court will take for review on Certiorari. That rule states:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons.
>
> . . .
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous

> factual findings or the misapplication of a properly stated rule of law.

Sup. Ct. R. 10. Petitioner does not even attempt to meet these standards. The sum and substance of his complaint is that he disagrees with the decision of the Third Circuit, and indeed with all of the decisions of every court that has heard this case over the last six years. The questions presented by this Petition and also by the Petition for Writ of Mandamus, are not of the character described by Rule 10, and those Petitions should therefore be denied.

II. The Petition for Writ of Certiorari was not timely filed.

Petitioner is seeking review of an April 19, 2006 Order from the Third Circuit. (App. 5.) Both the Petition for Writ of Certiorari and the Petition for Writ of Mandamus were docketed on November 29, 2006. Supreme Court Rule 13 states clearly that:

> 1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case . . . is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment . . .
>
> 2. The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time.

Sup. Ct. R. 13 (1,2). Even though the time for filing a Petition for Writ of Certiorari in this case expired on October 16, 2006, on or about that date, Petitioner mailed to this Court a Petition for Writ of Mandamus. The Clerk of this Court did not docket the Mandamus Petition on October 16, 2006, but instead the Case Analyst contacted

Petitioner's attorney to inform her that she was required to file a Petition for a Writ of Certiorari, and not a Petition for a Writ of Mandamus. The Case Analyst granted Petitioner's attorney an additional sixty (60) days to file the Petition pursuant to Supreme Court Rule 14(5). That rule applies to certiorari petitions that are timely filed, but do not meet the content requirements for certiorari petitions. Supreme Court Rule 14(5) states in its entirety:

> (5) If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition received no more than 60 days after the date of the Clerk's letter will be deemed timely.

Even though the mandamus petition did not have a defect of the type contemplated by Rule 14(5) (a petition for mandamus is not a defective certiorari petition), the Case Analyst permitted the late filing and this Petition for Writ of Certiorari is docketed at 06-744. The City of Hermitage requested a copy of the letter required by Rule 14(5), but was informed on December 19, 2006 that no such letter was sent and that the Clerk has no record of the date of any confirming conversation with Petitioner's attorney. Despite the fact that the extension of time was intended to allow Petitioner to correct the "defect," of their first filing, Petitioner was permitted to file the original Petition for Writ of Mandamus as well, which is docketed at 06-745. Ordinarily, a defective filing under Rule 14(5) would result in one corrected filing, not in two separate filings, one of which is still defective.

It is beyond cavil that both the Petition for Writ of Certiorari and also the Petition for Writ of Mandamus are

improper, and that they should not have been docketed. The filing of a Petition for Writ of Mandamus was not a defective filing of a Petition for Writ of Certiorari, and even if it was, the Mandamus Petition in this case was docketed as a separate case to which Defendants are now required to respond. Respondents have a right to fair application of the procedural rules. The procedural history set forth herein indicates that Petitioner's legal counsel had filed with this Court on three other occasions in this case, clearly understanding the procedural requirements, and no circumstances warrant a special application of the rules to Petitioner. Both Petitions should therefore be denied.

III. Petitioner is not Pro Se.

Petitioner in this case has made sure that he uses the term "pro se" in nearly ever paragraph of his pleadings to this Court, even highlighting the term in bold lettering. Saying the words "pro se" over and over again does not, however, change the fact that Petitioner is represented by an attorney and has been represented by legal counsel from the very early stages of this litigation. (Remember the Third Circuit remanded a legal malpractice claim that was decided by the District Court in 2003. That claim related to Petitioner's dissatisfaction with his legal representation prior to September of 2003). Petitioner has been represented by his current attorney since March 14, 2005. It is true that when Petitioner originally filed his Complaint in federal court in 2002 he was not represented by counsel, but for every stage of this litigation that is relevant to this (fourth) Petition for Writ of Certiorari (most

notably the April 19, 2006 Order for which he is seeking review) Petitioner acted through his legal counsel.

The lengths to which the Clerk of this Court has gone to extend the time for filing their Petition provides ample explanation for Petitioner's emphasis of his former pro se status. The use of that phrase appears to have caused the courts to bend over backwards to help them any time they fail to satisfy a procedural rule. But Petitioner is represented by an attorney who is admitted to the bar of every court that has handled this case, including this one. Even a pro se petitioner should not be afforded such drastically different application of the rules. As this Court explained in *Pliler v. Ford*, 542 U.S. 225, 231 (2004), "[J]udges have no obligation to act as counsel or paralegal to pro se litigants." In fact, the impulse to bend procedural rules for pro se litigants (or for litigants who are represented but nevertheless repeatedly use the term pro se) leads to arbitrary and unfair results for the opposing parties. That is exactly what has occurred in this case. The City of Hermitage, and indeed all of the other defendants, have a right to fair enforcement of the procedural rules. This Petition for Writ of Certiorari should never have been docketed under this Court's own rules, and now certiorari review should be denied for that same reason.

IV. Petitioner is not a prevailing party.

In essence, Petitioner is requesting this Court to revisit its Order of October 11, 2005 (App. 1) in which Petitioner was awarded costs of $300.00 to include an award of attorneys' fees pursuant to 42 U.S.C. § 1988 and attempts to ascribe error to the Third Circuit for failing to read such non-existent language into this Court's Order. The October

11, 2005 Order (App. 1) vacated the prior judgment of the Third Circuit "with costs" and went on to set those costs at $300.00. In conformance with this Order, the Third Circuit taxed costs in favor of Petitioner in the same amount. (App. 20.) Petitioner's attempt to read an award of attorneys' fees into this Court's prior Order is not only unavailing but simply inconsistent with the law.

42 U.S.C. § 1988 permits a court to award attorneys' fees to a prevailing party in certain civil rights litigation. In *Buckhannon Board & Care Home, Inc. v. West Virginia Dep't of Health and Human Res.*, 532 U.S. 598 (2001), this Court held that the term "prevailing party" cannot be interpreted to include litigants who have not received a judgment on the merits in their favor (or some other judicially enforceable relief such as a court ordered consent decree). Moreover, the decision in *Buckhannon* completely foreclosed the possibility of recovering attorneys' fees for parties who were merely the "catalyst" for changing a defendant's behavior in the absence of a judicial determination in their favor. Petitioner meets none of the standards for a prevailing party eligible for an attorneys' fees award.

A review of this Court's precedent over the last twenty years underscores the lack of merit in Petitioner's argument. In *Hanrahan v. Hampton*, 446 U.S. 754 (1980), this Court dealt with this precise issue of an appeal which fails to dispose of the merits of at least some of the claims and concluded that counsel fees were not appropriate in such circumstance. Similarly, in *Hewitt v. Helms*, 482 U.S. 755 (1987), this Court made it clear that prevailing on an interlocutory appeal is insufficient to merit an award of attorneys' fees. The plaintiff in *Helms* (a prisoner at the State Prison in Huntingdon, Pennsylvania) actually lost his

case, but his attorney petitioned to recover fees because he had prevailed on an interlocutory appeal of a decision dismissing the case for failing to state a constitutional claim. In an opinion by Justice Scalia, the Court held that the plaintiff was not entitled to attorneys' fees because:

> In order to be eligible for attorneys' fees under § 1988, a litigant must be a "prevailing party." Whatever the outer boundaries of that term may be, Helms does not fit within them. Respect for ordinary language requires that a plaintiff receive at least some relief on the merits of his claim before he can be said to prevail.

Id. at 760-761.

Petitioner relies on *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782 (1989), yet ignores the underlying premise recognized by this Court that a party will be considered to be "prevailing" only where that party has "established his entitlement to some relief on the merits of his claim, either in the trial court or on appeal." *Id.* at 790. Petitioner has never been close to establishing entitlement to relief on the merits. This Court's Order of October 11, 2005 (App. 1) simply remanded the matter back to the Third Circuit for further consideration – nothing more. In fact, the only decisions on the merits have been made adverse to the Petitioner.

Obviously, Petitioner in this case does not meet the foregoing standard to be considered "prevailing parties." Stated simply, he has never won a decision on the merits of their case. His greatest "victory" was to have this Court vacate and remand for further consideration an order from the Third Circuit upholding the dismissal of his claims. That does not entitle him to attorneys' fees, and he was already granted $300.00 in costs associated with his

(third) Petition for Writ of Certiorari. This Court should not grant them further relief.

CONCLUSION

Petitioner's (fourth) Petition for Writ of Certiorari to this Court is a perfect example of a frivolous pleading. It is completely devoid of merit and advances legal arguments that stretch the bounds of good faith and professionalism to their absolute limits. Petitioner did not file his Petition timely, and it should not have been placed on this Court's docket. Even if it were timely, Petitioner is requesting relief that this Court should not give ("supervision" of the deliberations of the Third Circuit judges) and relief that this Court cannot give (attorneys' fees for a non-prevailing party). Both the Petition for Writ of Certiorari and the Petition for Writ of Mandamus should be denied.

Respectfully submitted,

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